effectiveness of any cross action and therefore the mere fact that the Government would allow and always has allowed itself to be sued does not give it a right to sue.

The test, according to Lord Cairns, is whether the person state or corporation has the interest and in my opinion neither the laws quoted in paragraph 12 of the affidavit nor the fact that it acts as a juridical person create the Government a body in which interests may legally be vested and which may therefore sue and be sued in respect of those interests as a matter of legal right in the same manner as any individual or corporation.

The more recent case of *Yzquierdo v. Clydebank Engineering Company*[1] lays down the same test as Lord Cairns and in no way disturbs the principle in *Columbian Government v. Rothschild (supra)* as explained in *United States of America v. Wagner (supra)*. I think that principle should be followed and as I am of opinion for the reasons stated above that the Respondent is not a legal entity in which the interest can properly be vested I would allow the appeal and set the writ aside.

Appeal Dismissed.

SHER MOHAMED AND ANOTHER v. TELU RAM AND ANOTHER.

[App. Civil Juris. (Murray-Aynsley C.J., S.S., Pretheroe Ag. C.J., Malayan Union, Jobling J.) January 27, 1948]

Increase of Rent Restriction Ordinance. S. 8 — Relevant date at which rent must be in arrear to enable action for ejectment to be brought without permission of Rent Assessment Board — Whether payment by cheque is a good tender.

In this appeal two points of law were raised (1) What is the relevant date at which rent must be in arrear to bring the case out of the proviso in Section 8 of the Increase of Rent Restriction Ordinance and (2) Whether the payment of rent by cheque was a good tender.

Held, (1) following the decision in **Low Bee Hoe v. Morsalim**[1] that the relevant date at which the rent must be in arrear is the date of the summons; (2) in view of the fact that payment by cheque had previously been made and accepted and also in view of the fact that the appellants retained the cheque for nine days and only returned it immediately before the proceedings were instituted, that the appellants must be taken to have waived any objection to the mode of payment and that there was accordingly a good tender.

Case referred to:—

(1) *Low Bee Hoe v. Morsalim* (1946) M.L.J. 3.

CIVIL DISTRICT COURT APPEAL.

A. N. Mitra for the Appellant.

N. A. Mallal for the Respondent.

The judgment of the Court of Appeal was given by :—

Murray-Aynsley, C. J. : — In this case there were two points of law for determination. The first was, what is the relevant date at which rent must be in arrear to bring the case out of the proviso in section 8 of Increase of Rent [Restriction] Ordinance. We considered the judgment of Worley, J. in the case of *Low Bee Hoe v. Morsalim*[1]. We consider that it laid down the law correctly on this point and we have nothing to add.

The other point is, whether there was an effective tender of money due as rent before proceedings were instituted.

The facts were as follows :—

On February 24th the respondents sent a cheque for the amount due to the appellants. On March 5th the appellants' solicitors sent the following letter to the respondents, who lived in Seletar :—

> "Dear Sirs,
>
> Your letter of the 24th February 1947, enclosing a cheque for $40/- being the payment of the rent in arrears for the month of January and February 1947, has been placed in our hands with instructions to reply thereto.
>
> Our clients had already instructed us to take proceedings for ejectment. Your tenancy expired on the 31st Dec. 1946, by virtue of the notice to quit dated the 20th November 1946. From 1st January 1947, you became statutory tenants and you did not pay rent regularly and you have been in arrears of rent for Jan. and Feb. 1947. Moreover, you have tendered payment by cheque which is not a legal tender either.
>
> As you are in arrears already and our clients have instructed us to take proceedings, our clients do not accept this cheque which we return herewith.
>
> Yours faithfully
> sd. Menon and Mitra".

On March 7th proceedings were instituted.

Previously on January 6th the respondents' solicitors had written proposing to pay the rent by cheque and the appellants' solicitors had not objected; a cheque was sent and accepted.

In view of this and of the fact that the appellants retained the second cheque for nine days and only returned it immediately before proceedings were instituted we consider that the appellants had waived any objection to this mode of payment and that there was accordingly a good tender.

The appeal is accordingly dismissed.

Appeal Dismissed.